

**REPORT ON THE DEPARTMENT EVALUATION OF THE REASONABLENESS  
OF FEES COMPARED WITH THE EXPENDITURES OF REGULATORY  
AUTHORITIES ADMINISTERING NR 135 NONMETALLIC MINING  
RECLAMATION PROGRAMS IN WISCONSIN.**

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**ABSTRACT**

In response to a codified requirement, the Department Regional staff evaluated 20 Regulatory Authorities (RA's) administering nonmetallic mining reclamation programs. These RA's were audited to determine if fees (program revenues assessed against unreclaimed acres) and program administrative expenses (expenditures) were in balance and reasonable. A wide range of data were obtained reflecting the degree of program development and the number of reviews of reclamation plans that have occurred to date. Given the early phase of program implementation, many RA's felt it was a too early to say anything definitive about the level of fees charged, largely because most of the reclamation plan review costs have yet to be incurred. In conclusion, fees appear to be reasonable and to match expenditures incurred by regulatory authorities. The Nonmetallic Mining Advisory Committee (NMAC) is in agreement with this assessment but qualified its position to reflect the limitations of this early study. The NMAC advised the Department that the fee matter should be revisited once more complete information is available.

**INTRODUCTION**

During the consensus rulemaking process used to write Chapter NR 135, Nonmetallic Mining Reclamation, several stakeholders (nonmetallic mine operators and others in the regulated community) strongly expressed their concerns regarding the fairness of fees assessed on unreclaimed acres. Operators pay fees, on an annual basis, to county and local regulatory authorities that have passed reclamation ordinances establishing NR 135 reclamation programs. These fees are the source of revenue needed to administer such Nonmetallic Mining Reclamation Programs. In response to the afore-mentioned stakeholder concerns, NR 135.39(7) was drafted to require that the Department evaluate the reasonableness of fees and expenditures during the early part of the program implementation. The code, NR 135.39 (7), requires that after completing this evaluation and after consultation with the Nonmetallic Mining Reclamation Committee (NMAC), the Department must submit a report of their findings to the Natural Resource Board (NRB).

**ACKNOWLEDGEMENTS**

The WDNR Bureau of Finance and especially Troy Brown were extremely helpful in many ways including assisting in the development of the financial evaluation form for use in audits, in providing on-location training session for regional NR 135 staff on the audit process. This training was immediately followed by an exercise in which a "mock-audit" of Marathon County Zoning was conducted (thanks to Marathon County for their assistance and willingness). Much thanks is due the NR 135 subteam who worked on this process for more than a year. Without their efforts and diligence this report could not have been produced. We appreciate the concerns, and efforts of the NMAC (for a list of NMAC members please see Appendix 3).

## **METHODS**

### **A. OVERVIEW AND GENERAL SCHEDULE**

During the Summer and Fall of 2002 the NR 135 subteam met several times to plan the fee evaluation process and develop and finalize audit checklist and forms for use in 2003 audits. The program audits were conducted between May and early August, 2003 and the information and data gathered during the audit process were used to prepare this report. A draft report was sent to the NMAC on August 28 for their review and comment and will facilitate discussion of the fee report with the NMAC during the September 11, 2003 meeting. Finally, the Fee report is to be presented to the NRB at its October 21 & 22 meeting. Following completion of this process the fee report will be placed on the DNR Web site.

### **B. PLANNING AND PREPARTION**

1. Identify data needs and methods to obtain such data and number of audits.

We decided that the audit process contained in NR 135.47 was the best way to obtain data. We discussed the number of audits necessary to represent the program and the timing of such audits. We agreed that in order to obtain a representative sample of the 92 Regulatory Authorities (RA's) it would require a minimum of 20 "samples" - audits (generally 4 per region) as a representative sample upon which to base our report to the Natural Resource Board (NRB).

2. Identify and develop all necessary methods, tools and training.

The first step was to establish routine and consistent protocol and forms for use in conducting audits of county and local NR 135 reclamation programs. This was done in summer and fall of 2002. First, the Nonmetallic Mining subteam called upon its similar collective audit experiences and reviewed existing audit checklists used in other Waste Management Programs. Next we solicited input from the DNR's Bureau of Finance in developing the financial evaluation form and received training from Finance on the audit process. This training included a "dry lab" of the Marathon County Program. The objective of training was to promote consistency in approaches to performing audits.

3. Develop and employ audit selection criteria

A purely random approach to RA selection was favored but may have been modified to a "skewed" (non-random), at the discretion of the regional NR 135 staff contact. Such modifications considered one or more of the following:

"High Fees or lack of fee or report submission to DNR"

Fees exceed ceiling levels for fees given in NR 135.39, inappropriately assesses plan review fees in addition to acreage based fees prior to 2004, NMAC inquiry/complaint as to excess fees, failure to submit DNR share of collected fees and/or annual report in accordance with NR 135.

"Risk sensitive"

Total acreage and or total number of permittees overseen by the RA, regional contact experience/ comfort with how well the RA is managing the program - for example, if complaints from citizens or fellow operators are received.

Provide audit "tools" (standard audit package) for use by regional nonmetallic reclamation contacts and for distribution to auditees.

4. Provide audit tools (standard audit package) for use by regional staff who conduct audits and for distribution to auditees.

These include: the background on audits and connection to fees and the required report to the NRB, audit RA selection criteria (narrative), audit selection criteria aid - Excel spreadsheet to be used in support of above, sample letter to a selected RA, pre-audit checklist to be sent to those RA's who are selected to be audited, and audit checklist (used during audit) consisting of a) Financial evaluation form and b) comprehensive audit checklist.

## **C. STUDY IMPLEMENTATION**

Conduct audits, send written determinations to RA's as per NR 135.47 (4) and assemble data for report.

The DNR fee evaluation process for this report relied on the codified audit criteria {please see NR 135.47 (d) (e) (i) (m) [Contained in Appendix 2]}. Because these criteria address fee and recordkeeping issues, the audit process was deemed the most appropriate way to get at the reasonableness of fees and expenditures question. The audit process was developed in consultation with the TAC in rule development. The purpose was to promote uniform and fair program implementation across the state. This was in keeping with the principle of a "level playing field", an important principle for all stakeholders.

## RESULTS

**TABLE 1. LIST OF REGULATORY AUTHORITIES AUDITED FOR PURPOSES OF EVALUATION THE REASONABLENESS OF FEES AND EXPENDITURES**

County	Surplus or Deficit in \$	Backlog plans	# Permits	# Acres	Avg. Acre	Balance Expressed as Plus or Minus per Permit	Balance Expressed as a Plus or Minus per Acre
<b>Barron</b>	2,235	Some	59	443	7.51	37.88	5.05
<b>Buffalo</b>	-2154		10	146	14.60	-215.40	-14.75
<b>Clark</b>	-26,691	None	28	77	2.75	-953.25	-346.64
<b>Columbia</b>	-1370	Significant	29	1104	38.07	-47.24	-1.24
<b>Dane</b>	-1820	Significant	93	1016	10.92	-19.57	-1.79
<b>Door</b>	- 914		51	693	13.59	-17.92	-1.32
<b>Fond du Lac</b>	-880	Minimal	49	972	19.84	-17.96	-0.91
<b>City of Franklin</b>	2,707		2	211	105.50	1353.50	12.83
<b>Green</b>	-1161		26	168	6.46	-44.65	-6.91
<b>La Crosse</b>	18,818	Significant	21	191	9.10	896.10	98.52
<b>Marinette</b>	525	Significant	121	822	6.79	4.34	0.64
<b>Oneida</b>	22,260	Significant	50	761	15.22	445.20	29.25
<b>Ozaukee</b>	-4,081		9	125	13.89	-453.44	-32.65
<b>Polk</b>	2,596	Significant	63	410	6.51	41.21	6.33
<b>Sheboygan</b>	954		14	205	14.64	68.14	4.65
<b>Vilas</b>	10,550		34	588	17.29	270.50	17.90
<b>Walworth</b>	4,611		28	658	23.50	164.68	7.01
<b>Washington</b>	9,225		12	330	27.50	768.75	27.95
<b>Waukesha</b>	7,160		16	1171	73.19	447.50	6.11
<b>Winnebago</b>	12,549	Significant	67	655	9.78	187.30	19.16
	56,033		782	10746	13.74		

## DISCUSSION AND CONCLUSION

Addressing the question of reasonableness of fees collected by Regulatory Authorities (RA's) is anything but straightforward. Some of the complexity is due to "global" factors which cause difficulty in making comparisons among RA's, some is due to the diminished validity of using DNR fee tables developed in 1998 as a guide, some is due simply to a lack of time and experience in county and local government in administering nonmetallic mining reclamation programs. The last factor, especially, made it difficult to obtain sufficient data to support a complete analysis at the present time.

As a result of these "global" factors, costs may vary from one regulatory authority (RA) to another. This variation may result from the wide range of physical factors - geological, hydrological, mine types quarry/consolidated versus sand or gravel pit/unconsolidated) as well as local socioeconomic factors. To illustrate this, consider the problems with comparing a jurisdiction with a predominance of dry bluff-top quarries (relatively stable in terms of acres being mined) with short term, dynamic sand and gravel operations in another jurisdiction. Because of this, it is usually not meaningful to make simple comparisons among jurisdictions (RAs). That is to say, there is no basis to assume that fees that are reasonable in one jurisdiction can be realistically compared to another jurisdiction. Likewise, there is no basis to assert that fees that are reasonable in one jurisdiction are necessarily adequate or inadequate to offset administrative costs in another.

Beyond this difficulty in making comparisons there are several other cautions that should be borne in mind when evaluating reasonableness of fees. First, it should be kept in mind that the fee tables were developed in 1998. Any assumption that the DNR tables in NR 135.39 reflect the "high end" or could be used as a "fee ceiling" becomes increasingly less defensible, when one considers the general cost increases that have occurred (in the intervening 5 year period) and which will continue with the passage of time. When the fee tables for the code were developed the general assumption was that the DNR costs presented in NR 135.39, Table 2, would be on the "high end". This was largely due to transportation costs that were assumed to be significantly higher for the DNR than for those likely to be incurred by county or local RA's (presumed to be located close to the mining operations). On the other hand, one cannot simply assume that the fees specified in the fee tables in NR 135.39, Table 2 would provide a minimum or "adequate" level of revenue for any specific county and local program. Indeed, there neither was nor is any limitation on RA's with regard to collecting adequate fees provided that the fees can be justified and documented. In fact, it was anticipated that there would be occasions where the RA costs would be higher than the DNR table (considered a de facto "ceiling" level). Again, when an RA exceeds these fee levels it is incumbent on them to document their rationale.

Secondly, with regard to the 20 RA's that were audited for this report, one should keep in mind that some were selected largely because they appeared to have high fees and so are not necessarily representative of the fees assessed by the statewide array of regulatory authorities administering Nonmetallic Mining Reclamation programs.

Still more difficulty arises from the fact that this is an immature program and that there are a large number of reclamation plans yet to be reviewed. Because many RAs and operators were new to this program there has been a learning period for both. Regulatory authorities are gaining more efficiency as permit review and other administrative procedures are put in place, outreach to operators needs reduced, and experience is gained. Perhaps the greatest limitation to making definitive statements regarding fees at this time is due to the backlog of reclamation plans yet to be reviewed. When the Nonmetallic Mining Reclamation program was initiated, "automatic"

reclamation permits were granted to all existing operations that applied to their county or local RA. A condition on this permit was that operators submit full and detailed reclamation plans between one and three years after that date. The concept was to allow mining to continue and give operators sufficient time to prepare plans, regulatory authorities the chance to get their programs up and running and to exercise some control of submittal dates - so as to result in an orderly plan approval process. Unfortunately, regulatory authorities often did not avail themselves fully of this option. The result is that many ended up with large backlogs of reclamation plans and are facing a very busy last year (in most cases the reclamation plans need to be approved by fall of 2004). In such cases, any apparent surplus balances may reflect only the presence of this backlog in reclamation plan reviews. For this reason both the apparent surpluses that exist (see Table 1) as well as the marginal or deficit situations that RA's are now in, with regard to their funding balances, may become deficits as they address their own backlogs. For example, looking at Table 1 one can see that the RA's with the 3 highest surplus balances all had large backlogs in reclamation plan reviews to perform in the next year and may be expected to exhaust any apparent surplus during that reclamation plan review process. On the other hand, in at least one case, the RA has assessed a very low acreage fee and is waiting to the time of reclamation plan submittal to assess a permit review fee. This approach effectively offsets any increased "front-end" costs to operators.

Chief among the concerns expressed by the Nonmetallic Mining Advisory Committee (NMAC) that have emerged since automatic permits were granted in fall of 2001 are the wide variety of ways that RA's structured and collected fees. Although, by code, permit review fees for mines that received conditional automatic reclamation permits under NR 135.21 (b) were not to be assessed, a number of RA's proceeded to do so. There were other variations on how fees were structured (please see Appendix 4). In response to such concerns, the Department conducted a survey and documented the range of approaches in setting fees. These results were presented to the NMAC in August and February of 2002. In those presentations the Department attempted to equalize all these variations by expressing the actual fees on the basis of dollars per acre to allow comparison to the DNR fee table. This effort demonstrated, in most cases, both that the cost per acre was close to the DNR fee table and the actual cost to operators (on a per acre basis) were remarkably consistent across the state.

Department audits performed as a basis for this report, showed that in cases where the fees exceeded NR 135.39, Table 2, the audited RA was able to document costs and/or show that the surplus was in place in anticipation of the expenditures that will be incurred due to the extensive backlog of reclamation plans that still need to be reviewed. On the other hand, in cases where fees appear to be inadequate it is typical that this is done by choice of the RA or its Board (usually the county board). This is generally due to a desire to hold down costs to industry or due to a belief that since the industry benefits the common good, regulatory costs could be partially offset by public funds.

Based upon existing information the Department finds that, fees as evaluated by the audit conducted to support this report, appear to be reasonable and to match expenditures incurred by regulatory authorities. Given the early phase of program implementation, many RA's, Department auditors and the NMAC feel it is too early to say anything definitive largely because most of the costs for reclamation plan review have yet to be incurred. Indeed, in most cases where there appear to be surplus balances, these may be attributed to a backlog of reclamation plan reviews. Given that the backlog in reclamation plan review is probably an issue for most jurisdictions it is likely that those balances which appear close or in a deficit will also be affected thus increasing the number of RA's across the state that may find themselves in deficit situations. The assessment of DNR regional staff who conducted the audits was that RA's were doing a good job, often with

limited resources; that expenditures were documented and appeared reasonable; and finally that any surplus was attributable to the backlog of reclamation plans that will soon need to be reviewed. The Nonmetallic Mining Advisory Committee (NMAC) is in agreement with this assessment but qualified its position to reflect the limitations of this early study. The NMAC advised the Department that the fee matter should be revisited once more complete information is available.

**Table 2: Results of Revenue and Expenditure Comparison**

**A. Comparison of Program Revenue (Fees) to Costs of DNR Program Administration**

WDNR Nonmetallic Mining Reclamation Program in estimated expenditures and revenues

Fiscal Year	Hours Reported	Hours planned for	Hours reported As a % of Hours planned	DNR "income" - Revenue collected by RA's and forwarded to DNR	DNR Expenditure*
2001	4,922	6,708	73%	\$108,606	\$137,816
2002	5,388	6,066	89%	\$141,312	\$150,864
2003	4,883	5,410	90%	\$134,880	\$188,083
total				\$384,798	\$476,763
3 year Deficit					(\$91,965)

\* Annual DNR staff costs = hours reported x \$32.00/hr. For years 2001 and 2002 the figure excludes "indirect costs" such as travel, office etc.

## B. Audit Summaries, Fee Collection and Costs of RA Program Administration

Regulatory Authority/ report year	Barron County 2002
Program administered by:	County
Total permits issued	59
Total acres being mined	443
Fee structure	Acreage fee matches post-2004 reduced fee (i.e. 1-5 acres = \$150); plus plan review fee is assessed (see below).
Fees Collected by RA	\$19,900
Amt. Sent to DNR	\$ 3,235
Expenditures on program implementation	\$17,665
Surplus or (deficit)	\$2,235
Annual report received by DNR	Yes
Comments:	<p>Barron County believes the fees are not legitimately funding the program despite the results of the estimated expenditures; they are now documenting all program-related expenses to obtain a more exact cost assessment of program administration costs. The reclamation plan review process is ongoing with 80% of the plans reviewed. It is likely much of the current surplus will disappear as additional hours are invested in completing the pending plan reviews that require final approval and most of all in the backlog in collection of financial assurance - many plans have been approved but have not provided the financial assurance. Given the above it is reasonable to assume that the 2002 surplus revenue will be depleted as additional hours are spent completing plan reviews for automatically permitted sites and in coordinating the collection of financial assurance.</p> <p>Barron Co. splits program administration between Zoning and Soil &amp; Water Conservation Dept. Annual acreage fees collected by zoning while plan review fees are collected by Soil and Water Conservation Department. Eight different individuals are involved in program implementation and the County believes the program suffers as a result of not having at least one full time staff person who concentrates exclusively on NMM. Audit did demonstrate that overall program knowledge of staff is of concern.</p>



Regulatory Authority/ report year	Buffalo 2002
Program administered by:	County
Total permits issued	22*
Total acres being mined	146
Fee structure	Similar structure but fees lower than DNR model
Fees Collected by RA	\$ 10,160
Amt. Sent to DNR	\$1,265
Expenditures on program implementation	\$12,315
Surplus or (deficit)	(2,154)
Annual report received by DNR	Yes
Comments:	<p>* 16 inactive mines on ledger were assessed fees for "inactive mines"</p> <ul style="list-style-type: none"> <li>- Fees are reevaluated annually to assess their continued adequacy</li> <li>- To date 3 reclamation plans have been reviewed; thus deficit is probably greater</li> </ul>

Regulatory Authority/ report year	Clark 2002
Administered by:	County
Total permits issued	28
Total acres being mined	77
Fee structure	\$25 per acre; \$100 minimum
Fees Collected by RA	\$ 3,850
Amt. Sent to DNR	\$ 1,065*
Expenditures on program implementation	\$30,811
Surplus or (deficit)	(\$26,961)
Annual report received by DNR	No
Comments:	<p>*represents 2001 and 2002</p> <p>Clark County has reviewed all reclamation plans and expects no new plans in the foreseeable future.</p> <p>Clark County made a conscious decision NOT to collect fees that would pay for the entire program.</p> <p>Good recordkeeping system in place.</p> <p>No consideration of re-evaluation has been made at this point. Feel they would probably look at re-evaluating after about a 5-year period.</p>

Regulatory Authority/ report year	Columbia County 2002
Program administered by:	County
Total permits issued	38
Total acres being mined	1,104
Fee structure	Slightly less than DNR model
Fees Collected by RA	\$17,330
Amt. Sent to DNR	\$ 2,870*
Expenditures on program implementation	\$18,700
Surplus or (deficit)	(1,370)
Annual report received by DNR	No for 2002; yes for 2001
Comments:	* 2001 and 2002 sent together - Although fees and expenditures match well so far it was felt by the RA that it was too early to tell if revenues will offset expenses. - Not enough plan review so far to realistically assess such costs.

Regulatory Authority/ report year	Dane County 2002
Program administered by:	County
Total permits issued	93
Total acres being mined	1060
Fee structure	Close to DNR model
Fees Collected by RA	\$64,375 (58,600)
Amt. Sent to DNR	\$12,235 (2001 & 2002)*
Expenditures on program implementation	\$66,195
Surplus or (deficit)	(1,820)
Annual report received by DNR	Yes
Comments:	* 2001 and 2002 sent together

Regulatory Authority/ report year	Door 2001 and 2002
Program administered by:	County
Total permits issued	51
Total acres being mined	693
Fee structure	Close to DNR "model"
Fees Collected by RA	\$78,990*
Amt. Sent to DNR	\$ 3,880
Expenditures on program implementation	\$79,904
Surplus or (deficit)	(914)
Annual report received by DNR	Yes
Comments:	<p>* The collected fees shown appear to be high because they represent an initial permit period of 17 months rather than 12 months. Door County's Nonmetallic Mining fee schedule is set to provide higher fees during the first three year period of high workload with anticipated review of many reclamation plans. Then a fee reduction is planned to begin in December 2004 when the workload will likely reduce in size.</p>

Regulatory Authority/ report year	Fond du Lac
Program administered by:	County
Total permits issued	49
Total acres being mined	972
Fee structure	Fee Structure compared to DNR Table 2:
Fees Collected by RA	\$49,600
Amt. Sent to DNR	\$ 4,420
Expenditures on program implementation	\$50,480
Surplus or (deficit)	(880)
Annual report received by DNR	Yes
Comment:	<p>44 reclamation plans have been reviewed to date. Overall a slight deficit has been experienced with fees falling short of administrative costs, as noted for 2002. The actual carryover from year to year varies but was not used for this comparison because it has decreased through time to almost 0 due to increased budget.</p> <p>"... mining fees in Fond du Lac County was nearly equal to the costs to run the program.. Therefore, your assessment of fees to support the program appears to meet the intent of Wis. Adm. Code NR 135.39(4), that fees not be excessive."</p> <p>The County annual fees are lower than DNR Table 2 for smaller sites and higher than DNR Table 2 for larger sites. The average county fees are \$325 more per site. The County did document the need for higher fees to cover their NMM reclamation budget.</p>

Regulatory Authority/ report year	City of Franklin
Administered by:	City
Total permits issued	2
Total acres permitted	211
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$2,800 (1400 in 2001)
Amt. Sent to DNR	\$ 150
Expenditures on program implementation	\$ 392.77
Surplus or (deficit)	\$2,707.23
Annual report received by DNR	No
Comments:	The City has 2 large hardrock quarries in its jurisdiction. In the mid-1990's, the City included these 2 quarries in a Planned Development Unit per local zoning. The City developed very detailed end-use plans for the property. These plans have been accepted, verbatim, as the reclamation plans. Therefore, the City has incurred few costs.

Regulatory Authority/ report year	Green County
Administered by:	Consultant
Total permits issued	26
Total acres being mined	168
Fee structure	Similar to but slightly higher than DNR Fee table
Fees Collected by RA	\$50,010
Amt. Sent to DNR	\$ 1,610
Expenditures on program implementation	\$51,171
Surplus or (deficit)	(1161)
Annual report received by DNR	No
Comments:	

Regulatory Authority/ report year	La Crosse County 2002
Program administered by:	County
Total permits issued	21
Total acres being mined	191
Fee structure	\$200 per acre
Fees Collected by RA	\$39,338
Amt. Sent to DNR	\$ 935
Expenditures on program implementation	\$20,405
Surplus or (deficit)	\$18,818
Annual report received by DNR	No - will be submitted soon.
Comments:	<p>Fees will be reduced in 2004 to \$170.00 per acre.</p> <p>Staff time assessed for both Zoning and Land Conservation Departments.</p> <p><u>Zoning</u> – based on a time survey done early in the program. Hand written documentation of the hours that were spent and then an estimate of time per mine site was determined. Average hourly wage estimated at \$30.00.</p> <p><u>Land Conservation</u>– based directly on time sheets and an average hourly wage of \$40.00. Land Conservation time is low for 2002 because of loss of staff position that was to perform these duties. If you compare the hours for 2001 and hours put in for 2003 to this point and average that time, you can calculate an estimated 50 hours / month of staff time for NMM. This would equal out to \$24,000 per year for Land Conservation alone.</p> <p>Five reclamation plan reviews were completed prior to August of 2003. Of the remaining reclamation plans, three have been sent back to operator for revision and the remainder are yet to be submitted.</p>

Regulatory Authority/ report year	Marinette County
Program administered by:	County
Total permits issues	121
Total acres being mined	822
Fee structure	28 - 50% of Model; does assess a permit review fee of \$500 at time of permit review
Fees Collected by RA	\$16,531
Amt. Sent to DNR	\$ 4,358
Expenditures on program implementation	\$16,006
Surplus or (deficit)	\$525
Annual report received by DNR	No (no evidence in files) /yes(per Dave's review)
Comments:	For 2002 fees collected were v. close to expenditures. Therefore, fees were not excessive.

Regulatory Authority/ report year	Oneida County 2002
Program administered by:	County
Total permits issued	50
Total acres being mined	761
Fee structure	1-5 acres = \$300; 6-15 acres = \$500; > 15 acres = \$800
Fees Collected by RA	\$29,400
Amt. Sent to DNR	\$ 2,970
Expenditures on program implementation	\$ 7,932
Surplus or (deficit)	\$22,260
Annual report received by DNR	Yes
Comments:	3 reclamation plans reviewed and approved to date. Reclamation plans due September 2, 2004 and any accumulated surplus funds are expected to be used to deal with the review of approximately 47 reclamation plans.

Regulatory Authority/ report year	Ozaukee County
Administered by:	County
Total permits issued	9
Total acres being mined	125
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$4,220
Amt. Sent to DNR	\$ 180
Expenditures on program implementation	\$8,301
Surplus or (deficit)	(4,081)
Annual report received by DNR	No
Comments:	Expenses were an estimate based on total hours spent from time sheets for 3 people (103) multiplied by a standard wage & benefits multiplier. Although the County has relatively few mine sites, some of them are controversial and considerable staff time was spent on public outreach to explain the reclamation program

Regulatory Authority/ report year	Polk County 2002
Program administered by:	County
Total permits issued	63
Total acres being mined	410
Fee structure	Close to but less than the DNR model, no reclamation plan review fee, Fees will correspond to DNR Table 3 after January 1, 2004.
Fees Collected by RA	\$7,663.10
Amt. Sent to DNR	\$2,670
Expenditures on program implementation	\$5,066.9
Surplus or (deficit)	\$2,596.2
Annual report received by DNR	Yes
Comments:	The reclamation plan review process is ongoing with 70% of the plans reviewed. It is likely much of the current surplus will disappear as additional hours are invested in completing the pending plan reviews that require final approval. Also, there is a backlog in collection of financial assurance - many plans have been approved but have not provided the financial assurance. Given the above it is reasonable to assume that the 2002 surplus revenue will be depleted as additional hours are spent completing plan reviews for automatically permitted sites and in coordinating the collection of financial assurance. In the event that surplus funds are maintained, Polk County will need to reevaluate their fee schedule to more closely match program expenditures.

Regulatory Authority/ report year	Sheboygan County
Administered by:	County
Total permits issued	14
Total acres being mined	205
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$ 7,410
Amt. Sent to DNR	\$ 1,265
Expenditures on program implementation	\$ 6,456
Surplus or (deficit)	\$954
Annual report received by DNR	No
Comments:	The expenditures are estimates based on time records of hours worked multiplied by a standard wages & benefits multiplier.

Regulatory Authority/ report year	Vilas 2002
Program administered by:	County
Total permits issued	34
Total acres being mined	588
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$20,550
Amt. Sent to DNR	\$ 2,110
Expenditures on program implementation	\$10,000*
Surplus or (deficit)	\$ 10,550
Annual report received by DNR	Yes
Comment:	* Includes only salary; expenses such as vehicle mileage, office costs etc. were not tracked.

Regulatory Authority/ report year	Walworth 2002
Program administered by:	County
Total permits issued	28
Total acres being mined	658
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$30,654
Amt. Sent to DNR	\$ 1,970
Expenditures on program implementation	\$26,043
Surplus or (deficit)	\$ 4,611
Annual report received by DNR	no
Comments:	Expenditures are estimates based on staff log sheets and time sheets split into cost centers for time tracking. Equipment costs were minor (\$175.51). The County only owed the DNR \$3000.00 for 2002, but paid more due to late payments by operators for 2001.



Regulatory Authority/ report year	Washington County 2002
Administered by:	County
Total permits issued	12
Total acres being mined	330
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$11,500
Amt. Sent to DNR	\$ 1,280
Expenditures on program implementation	\$2,245
Surplus or (deficit)	\$9,225
Annual report received by DNR	Yes
Comments:	<p>The expenditures for 2002 are based on a rough estimate of the hours recorded (67.75) for 3 people times a standard wage &amp; benefits multiplier supplied by the County. No other program expenditures were tracked or recorded.</p> <p>These numbers do <u>not</u> reflect the cost of reviewing the majority of the reclamation plans.</p>

Regulatory Authority/ report year	Waukesha County
Program administered by:	County
Total permits issued	16
Total acres being mined	1171
Fee structure	Used the DNR Model (NR 135.39, Table 2)
Fees Collected by RA	\$17,500
Amt. Sent to DNR	\$ 1,910
Expenditures on program implementation	\$10,340
Surplus or (deficit)	\$7,160
Annual report received by DNR	Yes
Comments:	<p>All expenditures are estimates based on time spent (274 hours total) multiplied by a standard wage &amp; benefits multiplier. For the Year 2001, the County ran a deficit of \$2, 015.00. These figures do not include costs associated with reclamation plan review, which will be done in 2003 and 2004.</p>

Regulatory Authority/ report year	Winnebago County
Administered by:	ECWRPC
Total permits issued	37
Total acres being mined	655
Fee structure	\$20.38 per acre + PRF
Fees Collected by RA	\$27,113
Amt. Sent to DNR	\$ 2,895
Expenditures on program implementation	\$14,564
Surplus or (deficit)	\$12,549
Annual report received by DNR	Yes
Comments:	<p>The additional permit fees such as Automatic Permit Fees and New Mine Permit Fees are in addition to the Annual Fees and are in excess of the limits stated in NR 135.39(4)(C). However, the ECWRPC has followed correct procedures that allow it to charge additional fees initially to cover plan review expenses anticipated later because of the prohibition of charging plan review fees for sites that received Automatic Permits. The ECWRPC plans to review fees annually to ensure that the fees are in line with current expenses. The NMM records are open for public review at the County and at the ECWRPC to document the need for additional fees.</p> <p>The ... revenue balance is due in part to the fact that the program supervisor, spent only 15% of his time on Nonmetallic Mining rather than 33% as originally planned... plans to spend additional time in the near future helping to review and approve reclamation plans. The excess revenues are planned to balance with expenses by the end of 2003.</p>

## APPENDIX 2

### RELEVANT CODE CITATIONS

NR 135.39 FEES. (7) Within 36 months after the effective date of this chapter ... (*December 2000*). [revisor inserts date], the department shall submit to the natural resources board a report on whether the nonmetallic mining reclamation revenue, expenditures and fees established by this section and by other regulatory authorities are reasonable. The report shall be prepared in consultation with the nonmetallic mining advisory committee established under s. NR 135.51.

**"Note: The department intends to continue to consult and seek the advice of representatives of persons affected by the fees established by the department and other regulatory authorities for the purpose of preparing the report to the natural resources board required by this subsection."**

NR 135.47 DEPARTMENT AUDITS. (1) The department shall periodically review the nonmetallic mining program of each regulatory authority to determine if the program is being conducted in compliance with this chapter, and is effective and consistent in ensuring operator compliance with the statewide uniform reclamation standards contained in this chapter.

(2) The program review shall include a performance audit and on-site inspections of mining operations within the jurisdiction.

(3) During the performance audit the department may evaluate the regulatory authority with respect to all of the following:

(a) Compliance with the county or local regulatory authority's nonmetallic mining reclamation ordinance and the standards in this chapter.

(b) The procedures employed by the regulatory authority regarding reclamation plan review, and the issuance and modification of permits.

(c) The methods for review of annual reports received from operators.

(d) The method and effectiveness of fee collection.

(e) Procedures to accurately forward the department's portion of collected fees in a timely fashion.

(f) Methods for conducting on-site compliance inspections and attendant reports, records and enforcement actions.

(g) Responses to citizen complaints.

(h) The method of and accuracy in determining the amount of the financial assurance obtained from the operator to guarantee reclamation performance.

(i) The maintenance and availability of records.

(j) The number and type of approvals for alternative requirements issued pursuant to this chapter.

(k) The method of determining the success of reclamation in meeting the criteria contained in the reclamation plan and subsequently releasing the financial assurance pursuant to s. NR 135.40(7).

(L) Any changes in local regulations, ordinances, funding and staffing mechanisms or any other factor which might affect the ability of the regulatory authority to implement its nonmetallic mining reclamation program.

(m) The amount of fees collected in comparison to the amount of money actually expended for nonmetallic mining reclamation program administration.

(n) Any other performance criterion that the department may deem necessary to ascertain compliance with this chapter.

(4) The department shall issue a written determination to the audited regulatory authority not less than every 10 years within 90 days of its audit, of whether or not the reclamation program administered by the regulatory authority is in compliance with the provisions of this chapter.

(5) If the department finds and states, within 90 days of its audit, in its written determination that the regulatory authority is not in compliance with this chapter, the department shall give the regulatory authority adequate opportunity to correct deficiencies and respond to the department's comments.

## Appendix 3

### Information on NMAC Members

**Bruce Brown** Senior Geologist  
Wisconsin Geologic and Natural History Survey  
3817 Mineral Point Road  
Madison, Wisconsin 53705-5100  
(608) 263-3201

Dr. Brown received his Ph.D. from the University of Manitoba in 1984. His interest and experience areas include mineral and water resources and engineering geology. He has worked closely, for the past decade, with the nonmetallic mining industry in Wisconsin. He has experience with nonmetallic resources, production methods and permitting problems statewide. He has been a member of the WISDOT/industry committee on aggregate quality and testing.

**Jim Burgener**, Zoning Administrator  
Marathon County Zoning Department  
210 River Drive  
Wausau, WI 54403-5449  
(715) 261-6020

Mr. Burgener was a driving force in establishing the first county reclamation program in the state. Jim, with Marathon County has had extensive experience in the development and administration of nonmetallic mining reclamation program. As former president of the Wisconsin County Code Administrators (WCCA) and current member of the WCCA Executive Board Jim has been diligent in communicating to counties throughout the process.

**Sue Courter** - (previously Michels Materials)  
Foth & Van Dyke  
2737 South Ridge Road  
P.O. Box 19012  
Phone: (920) 497-2500 or (920) 496-6685  
FAX: (920) 497-8516  
scourter@foth.com

Currently, lead geologist and public relations specialist for Foth & Van Dyke. Assists clients in resource procurement, environmental compliance, education, and public affairs.

**Mike Erickson** -Aggregate producer and owner  
Erickson Quarries, Inc.  
P.O. Box 74  
Elroy, Wisconsin 53929  
(608) 462-5798

Mr. Erickson is a long-term owner and producer. He represented the perspective of the small operator during the rulemaking process. He has been actively involved with NR 135 since 1995 participating in the comment process, as a member of the Council and now the Aggregate Producers of Wisconsin.

**Mr. Ronald L. Garrison, Geologist**

Mathy Materials  
920 10th Avenue North  
Onalaska, WI 54650  
(608) 783-6411

Mr. Garrison plans and designs mine development. Ron supervises reclamation permit development and reclamation activities. He is involved in permitting with the townships, counties and DNR. Mr. Garrison is a member of the Sauk County Ad-hoc Mineral Extraction Committee and sits on the Board of Directors of the Iowa Limestone Producers Association. Ron previously worked as a consulting geologist and a project geologist.

**Marty Lehman**

Badger Mining Corporation  
P.O. Box 328  
Berlin, Wisconsin 54923  
(920) 361-2388

Mr. Lehman has a BS in Wildlife Management from UW Stevens Point. As an Environmental Management Associate Marty is involved in the development and implementation of comprehensive environmental management program. He is concerned with both reclamation plans and closure plans for corporate owned landfills. Marty previously worked for the Fond du Lac Land Conservation Department and with the DNR as a Wildlife Technician.

**Edward A. Reesman - Senior Manager**

Payne & Dolan, Inc.  
P.O. Box 781  
Waukesha, WI 53187  
(262) 524-1700

Mr. Reesman has been involved with community relations, environmental compliance and permitting. He has worked with all levels of government in promoting resolution or issues around nonmetallic mining. Mr. Reesman has participated in the MEAC Group, the purpose of which is, to bring all affected parties together on a regular basis for problem solving. Mr. Reesman is familiar with practical issues in mine reclamation.

**Matthew Stohr, Legislative Associate**

Wisconsin Counties Association  
22 E. Mifflin St., Suite 900  
Madison, WI 53703  
(608) 663-7188

The Wisconsin Counties Association (WCA) is a membership organization created by state statute for the furtherance of better county government and the protection of county interests. Mr. Stohr is a licensed lobbyist in Wisconsin. He works on land use legislation that affects Wisconsin Counties.

**Gary Werner**

Sierra Club  
2303 Lakeland Avenue  
Madison, Wisconsin 53704  
(608) 249-7870

## Appendix 4

### Excerpts From Previous Fee Reports to NMAC

## LEGEND & CORRESPONDING DNR FEE TABLES

**CODE A = Close to or equal to DNR Costs (NR 135 Table 2 - Before 2004)**

**CODE B = Close to or equal to DNR Costs (NR 135 Table 3 - After 2004)**

**CODE C = Category A plus a Plan Review fee**

**CODE D = Category B plus a plan Review fee**

**CODE E = N/A**

**CODE F = N/A**

**CODE G = Per acre fee**

### NR 135.39 Fee Tables

**TABLE 2: Annual Fees Due On Or Before December 31, 2003 Where The Department is the Regulatory Authority**

<b>Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre</b>	<b>Annual Fee</b>
1 to 5 acres, does not include mines < 1 acre	\$ 450
6 to 10 acres	\$ 600
11 to 15 acres	\$ 750
16 to 25 acres	\$ 1000
26 to 50 acres	\$ 1100
51 acres or larger	\$ 1250

**TABLE 3: Annual Fees Due On or After January 1, 2004 Where The Department is the Regulatory Authority.**

<b>Mine Size in Unreclaimed Acres, Rounded to the Nearest Whole Acre</b>	<b>Annual Fee</b>
1 to 5 acres, does not include mines < 1 acre	\$ 150
6 to 10 acres	\$ 300
11 to 15 acres	\$ 450
16 to 25 acres	\$ 600
26 to 50 acres	\$ 700
51 acres or larger	\$ 750

(5) RECLAMATION PLAN REVIEW FEE. (a) The regulatory authority may establish a reclamation plan review fee in its applicable reclamation ordinance that may be collected in addition to any annual fee collected pursuant to subs. (3) and (4). This fee may not apply to nonmetallic mines that submit a reclamation plan pursuant to s. NR 135.18(1)(c).

(b) If the department is the regulatory authority, the reclamation plan review fee for reclamation plans submitted on or after January 1, 2004 shall be as in Table 4. This fee may not apply to nonmetallic mines that submit a reclamation plan pursuant to s. NR 135.18(1)(c).

**TABLE 4: Plan Review Fee For Reclamation Plans Submitted On or After January 1, 2004 Where The Department Is The Regulatory Authority.**

<b>Proposed Mine Site Size, Rounded to the Nearest Whole Acre</b>	<b>One-Time Plan Review Fee</b>
1 to 25 acres	\$ 900
26 to 50 acres	\$ 1200
51 or more acres	\$ 1500

## **LEGEND**

**CODE A = Close to or equal to DNR Costs (NR 135 Table 2 - Before 2004)**

**CODE B = Close to or equal to DNR Costs (NR 135 Table 3 - After 2004)**

**CODE C = Category A plus a Plan Review fee**

**CODE D = Category B plus a plan Review fee**

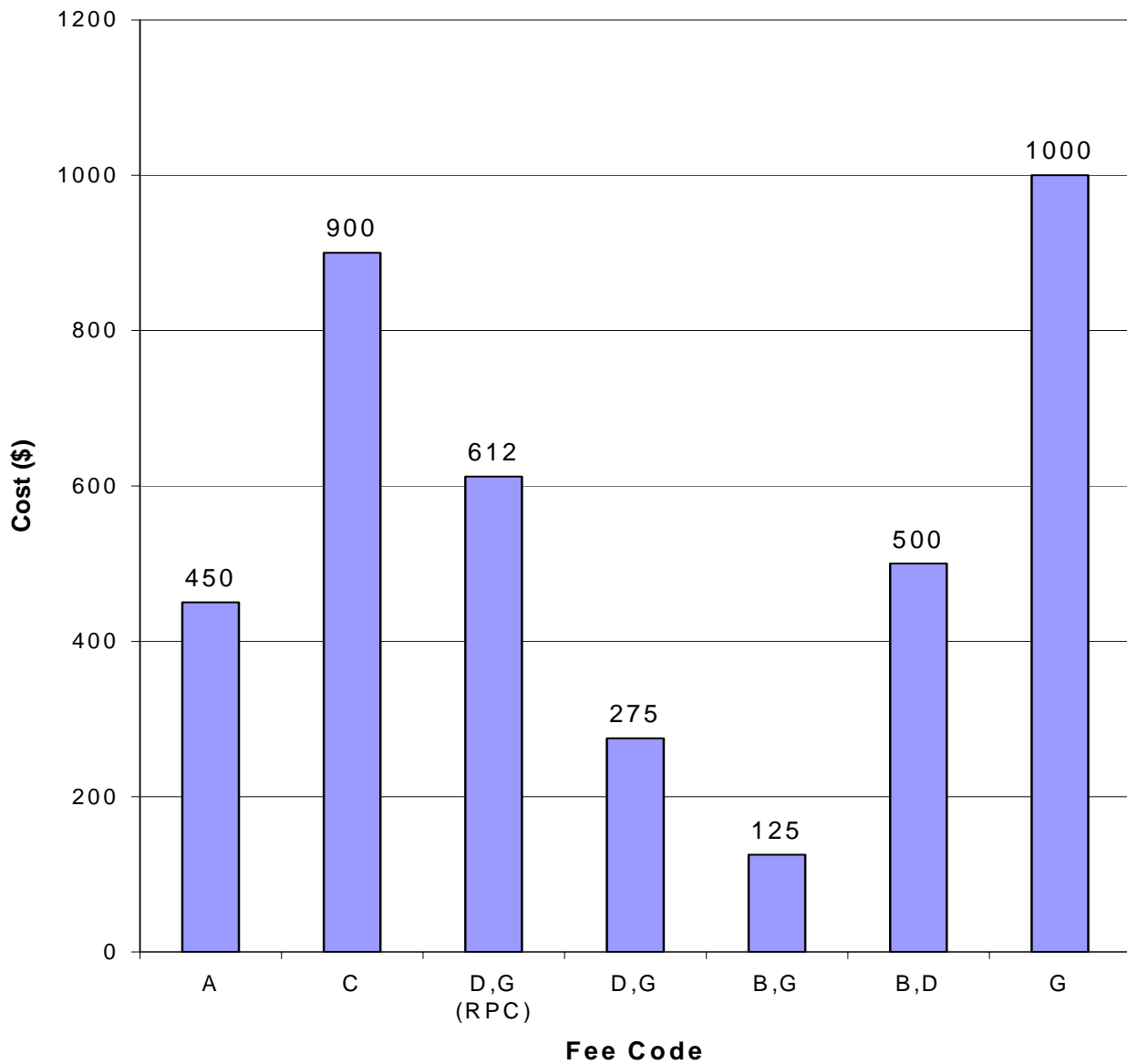
**CODE E = N/A**

**CODE F = N/A**

**CODE G = Per acre fee**



## Cost of permit for 5 acre mine



### LEGEND

**CODE A = Close to or equal to DNR Costs (NR 135 Table 2 - Before 2004)**

**CODE B = Close to or equal to DNR Costs (NR 135 Table 3 - After 2004)**

**CODE C = Category A plus a Plan Review fee**

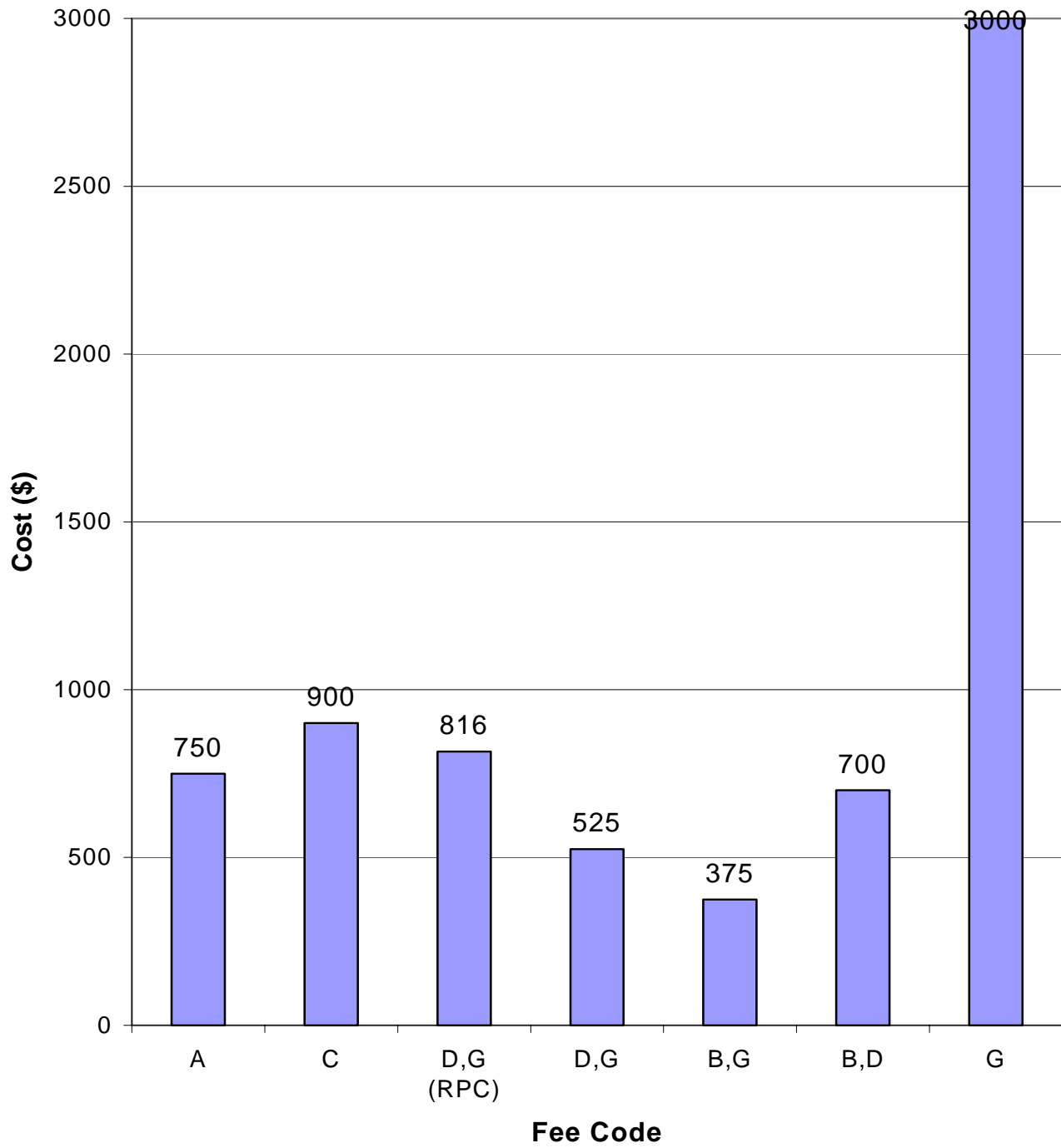
**CODE D = Category B plus a plan Review fee**

**CODE E = N/A**

**CODE F = N/A**

**CODE G = Per acre fee**

### Cost of permit for 15 acre mine



## Cost of permit for 25 acre mine

